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THE CORPORATION TRUST COMPANY AND AFFILIATED COMPANIES

The policy of The Corporation Trust Company in all matters relating to the incorporation, qualification, statutory representation, and maintenance of corporations, is to deal with members of the bar, exclusively.

1892-1930

Our original charter was filed on December 4, 1892. So, on December 4, 1930 we celebrate our thirty-eighth birthday.

DICTUM

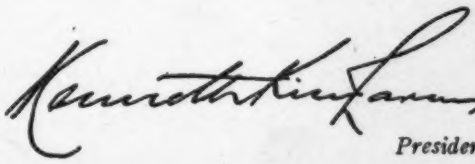
"We feel bound by what we say in our opinions, not because we said it, but because we had to say it in reaching the conclusion to which we came. Things said otherwise may be very wise, but we are only bound by them when we have to say them in reaching our conclusion. In other words, we are bound by our decisions, not by our remarks." Thus the Kentucky Court of Appeals at 31 S. W. (2d) 367, 370.

WEIGHTFUL WATCHING

"If stockholders would take a keener interest in corporate affairs, beyond the mere preservation of their indicia of ownership, namely their stock certificates and the proper registration thereof, it would undoubtedly be of inestimable value to them." Supreme Court of Colorado, 291 P. 1024, 1029.

"SOME IMPORTANT MATTERS"

appearing in this issue on page 285 is a convenient, helpful, regular feature of THE CORPORATION JOURNAL.



President.

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The Corporation Journal is published by The Corporation Trust Company monthly, except in July, August, and September. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices (see next page).

When it is desired to preserve the Journal in a permanent file, a special and very convenient form of binder will be furnished at cost ($1.50).

Contents for December

Talks On Foreign Corporations

The selling of goods by a foreign corporation in a state through traveling salesmen who solicit orders in the state by the use of samples or otherwise, sending the orders for acceptance to the home office of the company, outside of the state, the shipment of the goods being made directly to the customer, constitutes interstate commerce and a corporation thus conducting its "foreign" business is free from the requirements of taking out a license in the foreign state or the payment of taxes therein with reference to the privilege of doing business.

The statutes of all the states are so construed as to exempt a foreign corporation whose method of doing business in the state is confined to the soliciting of orders through traveling salesmen or "drummers."

Missouri has emphasized this exemption by the statement that the restrictions imposed by its statutes, "are not intended to and shall not apply to 'drummers' or traveling salesmen soliciting business in this State for foreign corporations which are entirely non-resident." (Section 9792, R.S. 1919, as amended.)

The Delaware statutes contain a provision with reference to traveling salesmen as follows, a foreign corporation so conducting its business within the state not being required to comply with the foreign corporations law of Delaware: "If it employs salesmen, either resident or traveling, to solicit orders in this State, either by display or samples or otherwise (whether or not maintaining sales offices in this State), all orders being subject to approval at the offices of the corporation without this State, and all goods applicable to such orders being shipped in pursuance thereof from without this State to the vendee or to the seller or his agent for delivery to the vendee; provided, that any samples kept within this State are for display or advertising purposes only, and no sales, repairs, or replacements are made from stock on hand in this State." (Chapter 138, Laws of 1929, effective May 7, 1929.)

The decisions, however, are limited in their application and rest upon the theory that orders taken for goods by traveling salesmen in the employ of foreign corporations do not constitute the contract itself, and that the contract has existence only from the time of the acceptance of the order.

While it is accurate to state that a foreign corporation is not doing business through the use of traveling salesmen, nevertheless the activities of such salesmen must be confined to the mere taking of orders, subject to approval at the home office and the subsequent shipment of goods from one state to another. If the salesman is given authority to bind the corporation or represent it in other ways, the status may be changed.

Domestic Corporations

California.

Suit for damages for the conversion of stock innocently sold by broker, the assignments having been forged. Wrongful delivery of certificates of stock issued on account of a stock dividend was made to one not entitled thereto. Thereafter forgery was resorted to in filling out the assignments, and the certificates thus purporting to be assigned were delivered to the defendant firm of brokers who innocently sold them to third parties, "and procured the corporation to cancel the forged certificates and issue new certificates to the purchasers." Plaintiff sued the brokers for damages for the conversion of the stock. In the court below judgment was for the plaintiff. The District Court of Appeal, First District, Division 2, California, affirms. It was claimed that the plaintiff never became the owner of the stock because there was no delivery to or acceptance by her of the certificates. This being stock dividend stock rather than stock subscribed for the court finds no authorities "on this very nice question" and so is "compelled to reason from analogy" and concludes that "The corporation having done all that is necessary on its part to make him [one entitled to a stock dividend] a holder of the new stock—the delivery of the certificate under well settled principles not being necessary for that purpose—his acceptance may reasonably be presumed, where, on learning of the fact, he does not repudiate the transaction, but, on the contrary, does all in his power to confirm it." Green vs. Cavalier et al., 290 P. 548. Pierre A. Fontaine, of Oakland, and Redman, Alexander & Bacon, of San Francisco, for appellants. Louis Ferrari and J. J. Posner, both of San Francisco, for respondent.

What constitutes a "managing agent" for purpose of service of process on a California corporation. The California law provides that in the case of a domestic corporation summons must be served by delivering a copy thereof to the president (several other officers are named), "or managing agent thereof." Here delivery was made to an employee of the company involved in a city other than that in which the corporation had its principal office, where its executive officers were regularly located. The question decided is whether or not he is a managing agent within the meaning of the statutory provision. The matter is considered at great length. The District Court of Appeal, Fourth District, California, affirming the court below, holds the service good,—a default judgment being ordered vacated, however, reasonable cause for nonappearance being found. The court says: "We are not inclined to hold that, to be a 'managing agent' within the meaning of our statute, such agent must manage the affairs of the corporation as a whole, nor that the term necessarily excludes one in charge of a single department of the corporation's business, nor that it necessarily excludes one in charge of all of its business at a place other than that where its principal office is, nor even that it excludes every agent whose discretion is, in any degree, controlled by a superior. None of these

tests is conclusive. We hold the true rule to be (quoting from the opinion in a New York case) 'every object of the service is obtained when the agent served is of sufficient character and rank to make it reasonably certain that the defendant will be apprised of the service made,' and that by service on such an agent 'the requirement of the statute is answered.'" Roehl vs. Texas Co., 291 P. 255, 262, and 265. Charles C. Stanley, and R. K. Barrows, both of Los Angeles, and Wirt Francis, of San Diego, for appellant. Harvey H. Atherton, of San Diego, for respondent.

Indiana.

Agreement and by-law giving other stockholders option to purchase shares of stockholders desiring to sell. In this case there are both an agreement and a by-law providing that a stockholder desiring to dispose of his shares shall by notice give the other stockholders a ten-day option to buy, he being thereafter free to sell to third parties if none of the other stockholders exercises his option. Action is to restrain a certain stockholder from assigning any of his shares, and the transfer of the shares so assigned on the books of the corporation, otherwise than in accord with the mentioned agreement and by-law. The Appellate Court of Indiana, reversing the court below, (other issues were involved that need not, for present purposes, be mentioned) sustains the agreement and by-law. It is stated (citing cases) that courts of appeal are not uniform in sustaining the validity of such a by-law as is before the court but that the weight of authority is to uphold the provision as a valid and reasonable restriction and binding on the stockholders, and the court holds the instant restriction on alienation not unreasonable and not against public policy. Attention is called to the fact that in some states the courts of last resort have refused to recognize such a by-law as valid but have enforced an agreement (to the effect stated) which agreement is evidenced by the by-law. Here there are both an agreement and a by-law and the court says it is immaterial which it sustains as "the result is the same." Doss vs. Yingling et al., 172 N. E. 801. Chester Y. Kelly and Piety & Piety, all of Terre Haute, for appellant. Paul R. Shafer and Walker & Hilleary, all of Terre Haute, for appellees.

Kentucky.

Portion of proceeds of sale of no-par value stock may be allocated to surplus account. The corporation here involved adopted an amendment to its articles of incorporation authorizing, inter alia, the issuance of common stock without par value and the allocation of the proceeds of future sales thereof either to capital account or to surplus account (not exceeding 50% of such proceeds to be allocated to surplus). The proceeding is under the Declaratory Judgment Act to determine whether or not such allocation of the proceeds of sale of no-par stock is permissible and whether or not the secretary of state may permit such an amendment to be filed. The court below answered the questions in the affirmative and the secretary of state appealed. The

Court of Appeals of Kentucky affirms. It was suggested that the state Constitution does not authorize the issuance of no-par value stock. The court answers that the Constitution does not in terms or by implication provide that stock with par value only shall be issued. The Kentucky statutes authorize no-par stock but do not expressly provide for the allocation of subscription proceeds to capital and surplus. The court holds that there seems to be no more reason why a corporation with no-par value stock should not accumulate a paid-in surplus from the proceeds from the sales of such stock, if this intention be expressly provided for in the subscription contract, than that a corporation having par value stock should build up such a surplus by selling its stock at a premium which "practice has been indulged in for many years, and has been recognized as a proper and safe method of financing a corporation" though the Kentucky statutes do not expressly provide for the sale of par value stock at a price above par so as to create a paid-in surplus. Lewis, Secretary of State, vs. Oscar C. Wright Co., 29 S. W. (2d) 566. J. W. Commack, Atty. Gen., and M. B. Holifield, Asst. Atty. Gen., for appellant. Frank M. Drake, of Louisville, for appellee.

Louisiana.

Partnership arrangement entered into between an individual and a corporation. Suit by a Louisiana corporation against an individual, a party to a partnership arrangement entered into between him and the corporation, to recover the amount of the losses sustained by virtue of the enterprise, the transactions contemplated and covered by the agreement having been completed. From the judgment below dismissing its suit the plaintiff appealed. The Supreme Court of Louisiana annuls the judgment and remands the case. The court says: "While according to the great weight of authority a corporation has no implied power to form a partnership with an individual, nevertheless, when such a partnership is formed, the individual member thereof cannot set up the invalidity of the partnership contract which has been fully executed. There are numerous cases [which are cited] which treat the pecuniary results of a partnership and an individual as subject to the protection of the courts." The contract transactions having been completed these (continues the court) "ought to be allowed to stand against both under the plainest rules of good faith and fair dealing. If we assume, without deciding, that the plaintiff corporation was acting without lawful authority in entering into the contract of partnership with the defendant, the defendant, nevertheless, is not in a position to avail himself of the defense of ultra vires in respect of the profits or the losses of the joint enterprise." J. P. Barnett Co., Inc., v. Ludeau, 129 So. 655. John W. Lewis, of Opelousas, for appellant. J. Hugo Dore, of Ville Platte, and L. L. Perrault and Dubuisson & Burleigh, all of Opelousas, for appellee.

Uniform Stock Transfer Act; lost certificate; bond. Certain certificates of stock owned by a nonresident of Louisiana and held without the state were treated by the lower court, in this action, as lost certificates—"the process of the court was powerless to reach

them." The facts disclosed, including the legal steps previously taken, need not be recited here. For present purposes it is sufficient to say that a preemptory mandamus issued compelling the defendant corporation to issue to plaintiff (a judgment creditor of the owner of the shares) new certificates for an equal number of shares as were held to be lost on "plaintiff furnishing bond with a surety company authorized to do business in Louisiana, as his surety thereon for the sum of the par value of the stock." Plaintiff appealed contending that there is no law of the state requiring a bond in such a case where it is not shown that the stock certificates are lost, that the actual value of the shares is much less than par, and that the Uniform Stock Transfer Act (adopted by Louisiana, Act No. 180 of 1910) does not require that the bond be signed by a surety company. The Supreme Court of Louisiana held that the facts shown warranted the lower court in treating the certificates as lost and that under the Uniform Act the amount of the bond required where a court orders a new certificate to be issued for one that has been lost rests in the court's discretion, but that the Act requires, only, that the surety shall be satisfactory to the court and so that the lower court erred in prescribing a surety company bond. Dyer vs. Bridge Heights Realty Co., Inc., 129 So. 647. Theo. Cotonio, Jr., and Theo. Cotonio, Sr., of New Orleans, for appellant. J. S. Lucas and H. J. Agregaard, of New Orleans, for appellee.

Michigan.

Common-law trust held to be a corporation. The Supreme Court of Michigan, in a suit brought by the trustees of a common-law trust dismisses the bill (the lower court found for the plaintiff) on the ground that the trust is a corporation within the meaning of the term as defined in the constitution and as used in the corporation laws, and that having failed to file an annual report as a corporation it may not maintain the action (the Corporation Code so provides). The court says: "A consideration of the Corporation Code (Act No. 84, Public Acts 1921) and of Act No. 85 (Public Acts 1921), enacted at practically the same time, and of the other statutory provisions providing for the organization, powers, and privileges of corporations, associations, and partnerships (2 Comp. Laws 1915, §7815 et seq.) leads us to the conclusion that the Legislature intended both of these acts to apply to corporations as defined in the Constitution, and that a trust as here created, wherein the purpose is to limit the personal liability of the investors therein, to provide for the issuance of negotiable certificates of interest, transferable only on the books of the trustees, and to provide that on the death of a stockholder his personal representatives should succeed to his interest in the trust property, is within such definition." Nedeau et al., vs. United Petroleum, 232 N. W. 202. Cross, Foote & Sessions, of Muskegon, and Joseph R. Gillard, of Grand Rapids, for appellant. Alexis J. Rogoski, of Muskegon, for appellees.

Missouri.

Right of preferred stockholders to cumulative dividends and to share in distribution on liquidation. The corporation here involved

went into voluntary liquidation about January 1, 1928. Suit is by a preferred stockholder to enjoin the corporation from distributing any part of the assets to the common stockholders until preferred-stock dividends at the preferred-stock rates for years before liquidation for which no preferred-stock dividends were paid, are paid, and to compel the defendant to allow the preferred stockholders to share in the distribution of assets after payment at par has been made to both classes of stockholders in respect of their stock holdings. Defendant's charter provides for a preferred-stock dividend "out of the net yearly income earned in any one current year" before any dividend is paid on the common stock, and that on distribution of assets the preferred stock shall "be first paid in full before any of said assets are applied to any of the common stock." On the day after incorporation was effected (in 1910), a by-law was adopted providing that the preferred-stock dividends were to be cumulative. During no one of the years no preferred-stock dividends were paid was there any net income. The Missouri Supreme Court (Walker, J., who dissents, with an opinion, thinks the plaintiff should prevail in each of his contentions) reverses and remands, with directions to dismiss the bill. The lower court found for the plaintiff to the extent of the cumulative dividends but denied his right to share in the surplus. The Supreme Court holds that the charter provision relative to preferred-stock dividends is unambiguous, that it does not call for cumulative dividends, and that the by-law provision (even if adopted with the consent of all the stockholders) is without force to alter the clearly expressed contract agreement as embodied in the charter; also (as did the lower court) that, on liquidating, when the par value of the preferred stock has been paid such stock, by the charter provision, has been "paid in full" and is not entitled to share in any assets then remaining. Murphy vs. Richardson Dry Goods Co., 31 S. W. (2d) 72. W. M. Morton, of St. Joseph, for plaintiff. Culver, Phillip & Voorhees, of St. Joseph, for defendant.

New Jersey.

Corporation may be insolvent within meaning of the corporation act though its assets exceed its liabilities. Bill was filed to foreclose a second mortgage executed to complainant at a time, so the New Jersey Court of Chancery holds, the mortgagor corporation was clearly insolvent, the complainant mortgagee being fully aware thereof. The defendant receiver resists, asking that the mortgage be annulled on the ground that it is void under section 64 of the Corporation Act (assignments, etc., when insolvent, the assignee, etc., being on notice). The corporation's only asset was an apartment house, the fair value of which, however, was in excess of the corporation's total liabilities. The corporation had assigned the rents (to complainant); "that it had no credit is demonstrated by, etc. . . ." "Large debts had matured which it was utterly unable to meet." The bill is dismissed and the mortgage annulled. The court says (citing cases): "A corporation is insolvent within the meaning of section 64 of the Corporation Act

when it is in general unable to meet its pecuniary obligations as they mature either by available assets or by an honest use of its credit." Puritan Corporation vs. Gannon et al., 151 A. 283. John D. Craven, of Jersey City, for complainant. Charles Hershenstein, of Jersey City, for defendant receiver.

New York.

Stockholder's liability on unpaid stock subscription. Action here is by the permanent receiver of a New York corporation against a stockholder for the unpaid portion of his stock subscription. The New York Supreme Court, Putnam County, renders judgment for plaintiff. The defense was on several grounds one of which was that the subscriber had been given the privilege to cancel the unpaid subscription at his option. As to this contention the court says: "It is equitable that, the defendant having subscribed for 100 shares and paid for 50 shares, and the balance of $5,000 having been carried on the books of this corporation as an asset to be paid, and the court having ordered the permanent receiver to proceed and collect the assets, and the defendant never having availed himself of his option to cancel the unpaid subscription, even if he had a legal right to do so, he should not now be permitted to do so." To the contention that the subscription was invalid (because of an alleged common stock bonus), and so that the stockholder should not be called on to pay, the court makes answer that "the defendant is estopped from raising any question as to the legality of his stock subscription, inasmuch as sound public policy and the plain rules of good faith dictate that he cannot avoid liability on his subscription upon that ground, inasmuch as he received dividends on the stock for which he paid, and was a director of the corporation." Crawford vs. Erbsloh, 244 N. Y. Sup. 502. Harold E. Lippincott, of New York City, for plaintiff. Curtis Mallet-Prevost, Colt & Mosle, of New York City, for defendant.

Forming a corporation to avoid usuary law. Here, an individual desired to procure a loan on a parcel of New York real estate. Those whom he approached in the matter declined to make the loan (because of the terms under which they were willing to lend) "unless he was incorporated," since "a corporation could not plead usuary." New York General Business Law §374 (Consol. Laws, c. 20). The individual organized a corporation to which he turned over the real estate in question and then the loan was made to the corporation, a large bonus being exacted. It is sufficient to say for present purposes that this is an action by the individual (after other legal steps had been taken) seeking a judgment that the mortgage is usurious and void and should be cancelled and discharged of record on the ground that the corporate entity should be disregarded and the loan considered as having been made to the individual who owned all of the corporation's stock—, that incorporation was but a cloak to evade the law. He prevailed below but the New York Court of Appeals reverses saying inter alia, "The law has not been evaded but has been followed meticulously in order to accomplish a result which all parties desired and

By the comp

What name is tied to *your* company's name as its corporate agent? Is it a name—like that of The Corporation Trust Company—which reflects solidity, financial strength, long-held public respect, and which is itself known to investors, investment houses, business executives and lawyers through its association, as corporate agent, with the greatest of American business institutions? The list at the right is but a tiny fragment of the thousands of corporations, the attorneys for which have chosen The Corporation Trust Company as best fitted to act and be known as corporate agent. Your own company will be in good company when its corporate interests are in the hands of The Corporation Trust Company.

A few examples fr ations represented twenty-five

Addressograph Company
Allied Chemical & Dye Corporat
Allis-Chalmers Manufacturing C pany
American Ice Company
American Light & Traction C pany
American Radiator & Standard S itary Corporation
American Writing Paper, Inc.
American Snuff Company
American Steel Foundries
Armour & Company
Ayer (N. W.) & Son, Incorpora
Borden Company (The)
Bucyrus-Erie Company
Chicago Pneumatic Tool Corpo tion
Chrysler Corporation
Coca-Cola Company (The)
Colgate-Palmolive-Peet Company
Continental Can Company, Inc.
Crucible Steel Company of Amer
Curtiss-Wright Corporation
Denver & Rio Grande West R. R. Co.
Drug, Incorporated
Dunlap Tire & Rubber Company

which the law does not forbid," and, "no ground has been found for disregarding the corporate entity, though that entity has been formed for the purpose of doing something permitted to a corporation but forbidden to an individual." Jenkins vs. Moyse et al., 254 N. Y. 319, 172 N. E. 521. Benedict A. Leerburger, Joseph M. Proskauer, J. Alvin Van Bergh, and Avel B. Silverman, all of New York City, for appellants. Florence J. Sullivan, of New York City, for respondent.

Ohio.

Laches in bringing action by stockholders dissenting to a reorganization plan. By more than a two-thirds vote of the shareholders of the corporation here involved a reorganization plan under the no par value stock act was adopted, which plan, in addition to the no-par-value-stock feature, provided for a class of preferred stock in addition to a class of preferred stock already authorized and issued, which was reauthorized, the new class being made senior to the renewed old preferred stock class. In connection with the exchange of stock incident to the reorganization cash payments to the corporation were provided for for those who cared to make them and exchange provisions were incorporated in the plan (to the extent of the preferred stock at least) for those who declined to make further cash contributions to the corporation's treasury. The plaintiffs in error, owners of shares of the original preferred stock, refused to make the exchange and to surrender their stock. This suit was brought some years after the reorganization plan had been adopted and put in force, the prayer being, in substance, that such reorganization be declared ineffective insofar as it attempts to affect the status, priority, or par value of all nonassenting preferred stock. At the time of the change in financial structure the corporation was not, so it is indicated, in an entirely satisfactory condition, financially; at the time of the bringing of this suit the corporation was in a flourishing condition, apparently. The Supreme Court of Ohio, affirming the judgment below, says: "The Court of Appeals correctly held that the plaintiffs in error were guilty of laches, in that they failed to institute these proceedings at a time when such an action would not have resulted in a loss to the present stockholders of the corporation, and at a time when to do equity to them would not have required the doing of a wrong to the defendant in error and its stockholders, no justification for the delay in bringing the action appearing by the pleadings." Kaifer et al vs. Ohio Leather Co. et al., and Beecher et al vs. Same, 172 N. E. 280. Barnum, Hammond, Stephens & Hoyt and J. V. Murphy, all of Youngstown, for plaintiffs in error. Harrington, DeFord, Huxley & Smith, of Youngstown, for defendants in error.

Texas.

Inspection and audit by stockholders of corporation's books and records. Certain stockholders made written demand to have access to the books and records of their corporation for the purpose of making

an audit thereof. The Texas law provides that the books and records of a domestic corporation "shall at all reasonable times be open to the inspection of any stockholder." The company responded that the audit would be permitted if named steps precedent were taken and named conditions were agreed to and complied with. The stockholders agreed to comply with some of these steps and conditions but refused to agree to comply with others. On failure to come to an understanding this suit to enforce their statutory right was brought by the stockholders. The case is of interest because of the recital of the conditions specified by the company, those agreed to and those declined by the stockholders, and those imposed by the trial court in rendering judgment for the plaintiffs. On appeal, the Court of Civil Appeals of Texas (Amarillo) affirms. Johnson Ranch Royalty Co. et al vs. Hickey et al., 31 S. W. (2d) 150. Underwood, Johnson, Dooley & Simpson, of Amarillo, for appellants. Dorenfield, Foster and Fullingim, of Amarillo, for appellees.

Washington.

Right of transferee of stock by purchase to be informed of pertinent provisions of corporation's by-laws so that he may ascertain what is required of him to procure transfer on the books. "The only question now raised is as to the correctness of the ruling of the trial court in sustaining the demurrer to the amended application." The Supreme Court of Washington reverses. In doing so the court says that when one acquires stock by purchase and presents the certificate to the corporation duly indorsed to him, he thereby shows that he is the only person interested in obtaining a transfer on the books of the corporation and is entitled, on demand, to be informed what is required of him for that purpose, i.e., to be informed of the terms of any by-laws with which he must comply in order to obtain a complete legal transfer of the stock. Here the certificate was presented at a time the books were closed for the transfer of stock, by duly approved resolution in accord with by-law provisions, pending an annual meeting of the stockholders, and there was some misunderstanding because of the refusal of the corporation to make the transfer. Hyland vs. Superior Service Laundries, Inc., et al., 290 P. 427. Lyons & Orton and Hyland, Elvidge & Alvord, all of Seattle, for appellant. Harold Preston, S. J. Chadwick, and Robert S. Macfarlane, all of Seattle, for respondents.

Foreign Corporations

Michigan.

The acquirement, holding, and sale of Michigan real estate by an unqualified foreign corporation. Action here is to foreclose a purchase money mortgage on Michigan real estate acquired, held, and sold by a Maine corporation that was not authorized to do business in Michigan. The defense was interposed that because of the mortgagee's status it could not bring suit and have decree of foreclosure. The corpora-

tion's charter gives it authority to purchase and convey real estate. The Michigan Supreme Court affirms the lower court's decree for plaintiff after denying a motion for a rehearing. The circumstances under which the Maine corporation acquired the Michigan realty are not disclosed. The court says that there is no law of the state prohibiting a foreign corporation from owning real estate in Michigan and from exercising the ordinary incidents of ownership, and further that admission or qualification is not required by statute as a step precedent to such power. The test on the right of the foreign corporation to sue is whether or not by such ownership, etc., it is carrying on its business in the state. The prohibition is not against the transacting of *any* business but against the *carrying on* of business. The court goes no further here than to say that for defendants to have a rehearing it was necessary for them to show affirmatively that in acquiring, managing as owner, conveying, and taking a purchase-money mortgage, the plaintiff was carrying on its business in Michigan and that this the defendants failed to do. In affirming the court says: "We have no facts evidencing incidental circumstances attesting corporate purpose to avail itself of the privilege of carrying on business in this state. * * * Beyond the usual incidents of ordinary ownership of real property we have but the fact that plaintiff is a foreign corporation, privileged to acquire and dispose of real property in this state, but not to carry on its business here." Electric Railway Securities Co. vs. Hendricks et al., 232 N. W. 367. G. A. Wolf and Clare J. Hall, both of Grand Rapids, for appellants. Bernard J. Onen, of Battle Creek, for appellee.

Service of summons on agent of foreign corporation is not good against the corporation if it is not doing business in state. The Maytag Company is a Delaware corporation engaged in manufacturing. It is not "doing business" in Michigan. The Maytag Sales Corporation is an Iowa corporation carrying on business in Michigan and is "closely identified" with the manufacturing company (the two being "officered by the same men" apparently). In a suit against the Delaware (manufacturing) company service was made on an agent or district manager of the Iowa (selling) company. It was contended that the selling company is the agent of the manufacturing company. The Supreme Court of Michigan, reversing the court below, directs the setting aside of the service. The court says: "Service upon the agent of a foreign corporation does not subject such corporation to the jurisdiction of the state courts unless the corporation is doing business in the state where such service is obtained," and, "Even if it be conceded that the sales corporation is a subsidiary of one or both of the appellants (the status of the other appellant need not be considered here), still the services obtained would not subject them to the court's jurisdiction because service on a subsidiary corporation does not constitute valid service on another foreign corporation not doing business within the state." Bachler vs. Maytag Co. et al., 232 N. W. 194. Lungerhausen, Weeks, Lungerhausen & Neale, of Mount Clemens (Paul S. Hirt, of Lenox, of counsel), for appellants. Walter M. Nelson, of Detroit, for appellee.

New Jersey.

On the appointment of a receiver for a foreign corporation. Suit here is for the appointment of a receiver for a New York corporation authorized to do business in New Jersey and doing business there, brought by a stockholder of the corporation. The Court of Chancery of New Jersey declines to appoint a master. After stating that it cannot give complainant any relief, assuming him to be entitled thereto, by any decree attempting to regulate the internal affairs of a foreign corporation, the court says that the bill is to be considered as one framed on the theory of establishing a condition of actual or inevitable insolvency, under the statute (Sec. 65 of the Corporation Act, as amended), and asking a decree to that effect and enjoining the exercise of defendant's corporate franchise, and the appointment of a receiver to liquidate its affairs. It is agreed, in effect, that defendant is not insolvent. Defendant urges that such a decree as mentioned above has never been made in New Jersey as to a foreign corporation, except where actual insolvency has been established, and contends that the court cannot, or at least should not attempt to, make such a decree. The court answers that as it has the power to make such a decree (limited in its extent, of course) in the case of actual insolvency of a foreign corporation "it would certainly seem that it has equal jurisdiction to make such decree in the case of the alternative situation mentioned in the statute, to wit, inevitable and imminent future insolvency." However, the "alternative situation" does not appear to exist, here, the court states. Fox vs. Pathe Exchange, Inc., 151 A. 463. Wm. Harris and Pitney, Hardin & Skinner, both of Newark, for defendant.

New York.

Ownership, merely, of undeveloped real estate in New York state by a foreign corporation does not constitute "doing business" there by it. A question arose here involving the clear title to a parcel of real estate. The vendee's principal objection to the title tendered was that the land was burdened with a lien for franchise taxes incurred by a Delaware corporation, one of the vendor's predecessors in title. The corporation had owned the property for six months. The United States District Court, Southern District of New York (the U. S. Circuit Court of Appeals, Second Circuit, affirming the decree, without opinion) says: "There is no proof that this Delaware corporation was ever engaged in business in New York State, and no inference in that regard is to be drawn from the mere ownership of vacant land. If the corporation did not engage in business, it was not required to pay a franchise tax, and its property was not burdened with a lien therefor." National Regulator Co. vs. Abco Boiler Corporation, (D. C.) 42 F. (2d) 712, (C.C.A.) 42 F. (2d) 713. Blackman, Pratt & Koehler, of New York (Thomas H. Rothwell, of New York, of counsel), for receiver and appellee. Gould & Newman, of New York (Julius F. Newman, of New York, of counsel —in the lower court), for Edward Gould and Joseph Spatt, and appellants.

Foreign corporations; service of process; what constitutes "doing business." Here it is held by the Supreme Court of New York, Special Term, Chemung, that if a foreign corporation and its traveling salesman publish as a fact that the salesman is a vice-president of his company (by use by the salesman, under direction or sanction of the corporation, of a business card on which in addition to his name and that of his company appears the word "Vice-President" and by oral statements by the salesman to prospective customers that he is a vice-president of the company) the corporation is estopped to deny that he is an officer, and service of process on him as an officer of the company is valid. It is further held that an agent who is a regular employee of a corporation and commonly comes into New York on the company's business, is sufficiently a managing agent, to the extent of the company's New York business, to render valid service of summons on the company through him as managing agent. The company, here, did no business in New York other than to solicit orders, accepted without the state, by means of a traveling salesman. It had no office in New York, had no designated agent in the state to accept service, held no meetings there, and had no bank account there. The court holds that the corporation was not doing business in New York, and, as a foreign corporation may not be sued in the New York courts unless it is doing business in the state, grants the motion to vacate the service of summons (on the salesman as intimated above). Halpern vs. Pennsylvania Lumber Industries, 244 N. Y. Sup. 372. Charles Soble, of New York City, for the motion. Max J. Herman, of New York City, opposed.

Texas.

Foreign corporation, though not qualified in Texas, may sue in Texas courts in connection with an interstate transaction. Into the merits here we do not go. The question of present interest "presented for decision" is whether or not the plaintiff-appellee company pleaded and proved facts entitling it to maintain the suit. The Court of Civil Appeals of Texas (Eastland) finds that it did. The corporation alleged in its petition that it was a New York corporation having a permit to do business in Texas and further alleged, in effect, that it was entitled to sue in any event since the matter in controversy involved a strictly interstate transaction. There was no proof that the company had a Texas permit but proof supported the allegation that the transaction on account of which recovery is sought was interstate in character. The court says: "A foreign corporation, though without a permit to do business in this state, may maintain a suit in the courts of this state for the recovery of the price of its products, if the transaction is interstate in its character." Roberts vs. J. B. Colt Co., 31 S. W. (2d) 196. Ratliff & Ratliff, of Haskell, for appellant. Cox & Hayden, of Abilene, for appellee.

Question of foreign corporation's right to sue, its right to do business having been forfeited because of failure to pay franchise tax, may not be raised for first time on appeal. The Texas corpora-

tion law provides that a domestic or foreign corporation's right to do business in the state shall be forfeited on its failure to pay its franchise tax within the statutory period (provision being made for reinstatement or revival of the permit within a stated time), and that in the event of such a forfeiture without revival a corporation may not sue or defend in any court of the state. In a certain action a foreign corporation intervened and its claim was sustained below, in part only. On appeal, by it, for the first time, on motion to dismiss, it is urged that the intervener is a foreign corporation whose permit to do business in the state has been forfeited. The Court of Civil Appeals of Texas overrules the motion, holding that it is "now too late to raise the question" basing its finding on and citing with approval the Panhandle Tel. & Tel. Co. case (132 S. W. 963, writ of error denied) in which it was held in effect that a corporation's right to do business in Texas without a permit may only be raised by plea and supporting evidence in the trial court. Union Mortgage Co. et al. vs. McDonald, 30 S. W. (2d) 506. J. E. Whitehead, of Dallas, for appellants. Mike E. Smith, of Fort Worth, and Fred J. Dudley, of Dallas, for appellee.

Taxation

Georgia.

Certain corporation exempt from annual license or franchise tax. The corporation here involved—defendant in error—was incorporated under a charter granted by a state Superior Court. Its charter empowers it to buy and sell real estate and personal property and to construct houses and to enter into all necessary contracts, etc., pertinent to such purpose. A piece of realty was acquired and a building erected thereon which it leased for a term of years. It owns no other property, maintains no separate office, has no office furniture, and pays no rent. Its sole activity aside from maintaining its corporate existence and paying property taxes, is to collect the rentals for its own building and to distribute the net profits to its stockholders. By the Georgia Laws of 1929 (p. 85, § 1) each domestic corporation doing business in the state (with certain exceptions not material here) shall pay an annual license or occupation tax in accordance with certain specified sliding scale rates. The Supreme Court of Georgia, affirming the judgment below, holds that a corporation engaged as described is not "doing business" and so is not liable to the tax referred to. Harrison, Comptroller General vs. Forsyth Hunter Co., 153 S. E. 758. Geo. M. Napier, Atty. Gen., T. R. Gress, Asst. Atty. Gen. and Troutman & Troutman and Robert S. Sams all of Atlanta, for plaintiff in error. Morris Brandon, Jr., of Atlanta, for defendant in error.

Idaho.

Tax on shares of stock of foreign corporation, the shareholders being nonresidents of the taxing state, held invalid. The tax here

involved (specifically as applied to foreign corporations authorized to do business in Idaho) is not of direct concern to ordinary business corporations being the "moneyed capital" tax of Idaho imposed on the shares of stock of foreign companies, etc., employing capital in the state in competition with state and national banks, the tax to be assessed against and collected from the corporation. (Chapter 252, Idaho Laws of 1929.) However, in THE CORPORATION JOURNAL for January, 1930, (page 89), we made reference to National, etc., vs. Gillis, Atty. Gen., 35 F. (2d) 386, wherein the United States District Court, D. of Idaho, S. D., upholding this tax law, said the contention that since the tax is on the shares of stock (intangible personal property) of the interested foreign corporations, qualified to do business in Idaho, most of which are owned by nonresident shareholders and have their situs at the domicile of the owners Idaho is without power to impose it, is unsound, since foreign corporations by entering the state and doing business there have impliedly and are deemed to have consented that, as provided by the state constitution, they shall not have or be allowed to exercise or enjoy any greater rights or privileges than those possessed or enjoyed by domestic corporations of the same or similar character, and it being conceded that to the extent of the tax in question domestic and foreign corporations and their stockholders are under a like burden. The Supreme Court of Idaho, here, affirms the judgment below perpetually enjoining the Attorney General from enforcing the provisions of the act, the plaintiff-respondent being a foreign corporation qualified to do business in Idaho all of whose stockholders are nonresidents of that state, and holds the law to the extent that it attempts to tax the property of a nonresident, the situs of which property is without the state, to be a direct infringement of the 14th Amendment to the Federal Constitution. In the opinion it is said: "Nor will it do to argue that by the corporation having been licensed to do business and continuing to do business in this state since the adoption of the act in question, the stockholders have impliedly assented to the conditions imposed. Between the corporation and its stockholders exists no such agency as would bind the latter in regard to his own personal property." Utah Mortgage Loan Corporation vs. Gillis, Atty. Gen., 290 P. 714. W. D. Gillis, Atty. Gen., and Fred J. Babcock, Asst. Atty. Gen,, for appellant. Richards & Hara, of Boise, for respondent.

Blue Sky Legislation.

Commerce Clearing House, Inc., has recently published as a supplement to its Stocks and Bonds Law Service a scholarly article, instructive and interesting, embodied in a pamphlet of some thirty pages, on the genesis and development of blue sky legislation in the United States. The author is Raymond L. Wise, a member of the New York bar, former Special Assistant to the United States Attorney for the Southern District of New York, and recently Deputy Assistant Attorney General, the Bureau of Securities of the Department of Law of the State of New York. The

treatment is in three parts devoted, respectively to (1) History, Need and Basic Principles, (2) The Types of Laws, Their Advantages and Disadvantages, and (3) The Trend of Decisions, Legislation, and Other Recent Developments. A few copies of the pamphlet are available for distribution on request made to any one of our several offices.

Some Important Matters for December and January

This calendar does not purport to cover general taxes or reports to other than state officials, or those we have been officially advised are not required to be filed. *The State Report and Tax Service* maintained by *The Corporation Trust Company System* sends timely notice to attorneys for subscribing corporations of report and tax matters requiring attention from time to time, furnishing information regarding forms, practices and rulings.

ALASKA—Annual Corporation Tax due on or before January 1.—Domestic and Foreign Corporations.

ALABAMA—Annual Application Fee for permit to do business due February 1.—Domestic and Foreign Corporations.

CONNECTICUT—Annual Report due on or before February 15.—Domestic and Foreign Corporations.

DELAWARE—Annual Report due on or before first Tuesday in January.—Domestic Corporations.

DISTRICT OF COLUMBIA—Annual Report due between January 1 and January 20.—Domestic Corporations.

GEORGIA—Annual License Tax Report due on or before January 1.—Domestic and Foreign Corporations.

KENTUCKY—Annual Report due on or before February 1.—Domestic and Foreign Corporations.

Excise or License Tax Report of Retail Merchants due on or before February 1.—Domestic and Foreign Corporations doing business as retail merchants.

LOUISIANA—Annual Report due on or before February 1.—Domestic and Foreign Corporations.

NEW YORK—Annual Franchise Tax based on Income of Business Corporations due on or before January 1.—Domestic and Foreign Business Corporations other than realty and holding companies.

OHIO—Report to Industrial Commission due during January.—Domestic and Foreign Corporations.

SOUTH CAROLINA—Annual Statement due on or before January 31.—Foreign Corporations.

UNITED STATES—Fourth Instalment of Income Tax imposed for the calendar year 1929 due on or before December 15.—Domestic Corporations and Foreign Corporations having an office or place of business in the United States.

UTAH—Corporation License Tax due between November 15 and December 15.—Domestic and Foreign Corporations.

The Corporation Trust Company's Supplementary Literature

In connection with the various departments of its business The Corporation Trust Company publishes the following supplementary pamphlets and forms, any of which it is always glad to send without charge to readers of The Journal:

When Corporations Cross the Line. A simple explanation of the reasons for and purposes of the foreign corporation laws of the various states, and illustrations of when and how a corporation makes itself amenable to them. Of interest both to attorneys and to corporation officials.

What Constitutes Doing Business. (Revised to April, 1930). A 208-page book containing brief digests of decisions selected from those in the various states as indicating what is construed in each state as "doing business." The digests are arranged by state, but a Table of Cases and a Topical Index make them also accessible either by case name or topic.

Questionnaire on Business Outside State of Organization. This is a form for attorney's use in determining when a corporation should be qualified. The questions are those which will usually bring out the points necessary to be considered.

Why a Transfer Agent? The question of why corporations, even those of small capitalization or with inactive or closely held stock, are safer when their stock records are in the hands of an experienced transfer agent is answered in this pamphlet by actual incidents from the experiences of different corporations.

Why Corporations Leave Home. This is an informal discussion, from the business man's point of view and in layman's language, of why so many business companies are organized under the laws of Delaware instead of in their home states. While primarily for laymen, lawyers also may find this pamphlet useful when considering the matter of what state to choose for incorporation of a client's business.

Analysis of Delaware Amendments of 1929. In this especially prepared pamphlet the full text of all provisions, both of the corporation law and the franchise tax law, which were changed by the amendments of 1929 is so presented as to show (1) the law as it stood before amendment; (2) matter repealed; (3) new matter. Then, immediately following each section changed, is a short, clear explanation of the reason for and effect of the change.

Delaware Corporations. Presents in convenient form a digest of the Delaware corporation law, its advantages for business corporations, the attractive provisions for non par value stock, and a brief summary of the statutory requirements, procedure and costs of incorporation.

Special Reports. When cases are decided that seem to be of some particular interest or significance in connection with the matter of doing business by foreign corporations, The Corporation Trust Company sometimes issues one of these special reports. One on the Southwest Company case is now available.

Transfer Requirements Chart. This supplement to The Stock Transfer Guide and Service shows the classifications into which requests for stock transfer are divided and how the principal requirements for each classification may be determined, either by the transfer agent or the individual desiring transfer made.

A Special Federal Tax Service Offer

At least two hundred readers of THE CORPORATION JOURNAL will install and become new subscribers to the four volume Standard Federal Tax Service for 1931 to obtain the benefits and exceptional advantages afforded by the best in tax service. They will join the thousands that rely on this service and have been doing so for the past one to seventeen years.

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